

State of South Dakota

NINETY-FIRST SESSION LEGISLATIVE ASSEMBLY, 2016

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SENATE BILL NO. 156

Introduced by: Senators Vehle, Frerichs, Holien, and Tieszen and Representatives Partridge, Harrison, Johns, Romkema, and Zikmund

1 FOR AN ACT ENTITLED, An Act to establish certain requirements and protections regarding
2 transportation network companies.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That the code be amended by adding a NEW SECTION to read:

5 Terms in this Act mean:

6 (1) "Transportation network company" or "TNC," a business entity operating in the state
7 that uses a digital network to connect riders to transportation network company
8 services provided by drivers under the network; that does not provide taxi service,
9 limousine service, shuttle service, or any other private passenger transportation
10 service; and that does not own, control, operate, or manage the motor vehicles used
11 by the drivers;

12 (2) "Transportation network company digital network" or "TNC digital network," a
13 digital platform, created and maintained by a transportation network company, used
14 to create and facilitate communication, services, and payment between a network of
15 drivers and riders and the transportation network company;



(3) "Transportation network driver" or "driver," a person who operates a motor vehicle that is owned, leased, or otherwise authorized for use by the person, that is not a taxi, and that is used to provide TNC services;

(4) "Transportation network rider" or "rider," a passenger in a motor vehicle operated by a TNC driver for whom the transportation is provided by the driver, whether the rider used the TNC's digital network to obtain the services personally, or is a member of the party of a person who used the technology or software to obtain the services;

(5) "TNC services" or "services," the transportation of a rider between points chosen by the rider and prearranged with a driver through the use of a TNC digital network. The transportation begins when the driver accepts a request for transportation through the TNC's digital network, continues while the driver transports the rider in the driver's motor vehicle, and ends when the rider exits the driver's motor vehicle. The term does not include transportation provided through a shared expense carpool or vanpool arrangement or by using a taxicab, limousine, or other for-hire vehicle.

Section 2. That the code be amended by adding a NEW SECTION to read:

Prior to operating in the state, a transportation network company shall register with the Department of Public Safety, providing the following information:

(1) All contact information for the TNC, including the agent for service of process within the state;

(2) A sales tax license issued by the state;

(3) The TNC's certificate of authority, as registered with the secretary of state; and

(4) Proof of insurance, pursuant to Sections 6 and 7 of this Act.

Upon registration, the Department of Public Safety shall issue to the TNC a license to operate within the state.

Section 3. That the code be amended by adding a NEW SECTION to read:

A transportation network company operating in the state shall:

- (1) Provide each rider with any applicable rates charged for TNC services and the option to receive an estimated fare before the rider enters the driver's motor vehicle;
- (2) Use a software application or website to display a picture of the driver and the license plate number of the motor vehicle utilized for providing the TNC service before the rider enters the driver's motor vehicle;
- (3) Transmit an electronic receipt to the rider within a reasonable time after the completion of a prearranged ride that lists the origin and destination of the trip, the total time and distance of the trip, and an itemization of the total fare paid;
- (4) Implement and provide notice of a zero tolerance policy on the use of drugs or alcohol while a driver provides TNC services or is logged into the TNC's digital network but is not providing services; and
- (5) Maintain an agent for service of process in the state.

Section 4. That the code be amended by adding a NEW SECTION to read:

A transportation network company shall require any person, prior to becoming a driver on the TNC's digital network, to submit an application that includes the applicant's address, age, driver license number, driving history, proof of motor vehicle registration, and proof of personal motor vehicle liability coverage. A TNC shall also obtain motor vehicle records and conduct, or have a third party conduct, a local and national criminal background check on any potential driver that includes a multi-state criminal records locator or similar commercial nationwide database with validation, as well as a national sex offender registry search. Nothing in this section may be construed to limit the information a TNC may collect prior to driver activation on the TNC's digital network, if the information is directly related to ensuring rider safety.

Section 5. That the code be amended by adding a NEW SECTION to read:

A transportation network company shall maintain individual trip records for each driver for at least one year from the date each trip was provided by the driver and driver records for no less than five years from the date on which a driver's activation on the TNC's digital network has ended.

Section 6. That the code be amended by adding a NEW SECTION to read:

The following motor vehicle liability insurance requirements shall apply during the time that a driver is logged into the transportation network company's digital network and available to receive requests for transportation, but not providing services:

- (1) Primary motor vehicle liability insurance in the amount of at least fifty thousand dollars for death and bodily injury per person, one hundred thousand dollars for death and bodily injury per incident, and twenty-thousand dollars for property damage; and
- (2) The coverage requirements of subdivision (1) may be satisfied by motor vehicle insurance maintained by the TNC, or the driver, or any combination of such insurance.

Section 7. That the code be amended by adding a NEW SECTION to read:

The following motor vehicle liability insurance requirements shall apply when a driver is providing services:

- (1) Primary motor vehicle liability that recognizes the transportation network company driver's provision of TNC services; and
- (2) Motor vehicle liability insurance of at least one million dollars for death, personal bodily injury, and property damage.

The requirements in this section may be satisfied by motor vehicle liability insurance purchased by the driver, insurance maintained by the TNC, or any combination of such

1 insurance. A TNC driver shall provide notice to any insurance company of the driver's intention
2 to provide TNC services and shall purchase insurance specifically according to that coverage.
3 Nothing in this section may be construed to limit the financial liability of the driver or the TNC
4 to one million dollars if a court finds a greater amount necessary for a proper judgment. A driver
5 shall provide to the TNC, and carry at all times, proof of the insurance required under sections
6 6 and 7 of this Act during the driver's TNC service. The driver shall provide proof of the
7 insurance and information on whether or not the driver was logged in to the TNC's digital
8 platform at the time of an accident to the directly interested parties, automobile insurers, and law
9 enforcement upon request.

10 Section 8. That the code be amended by adding a NEW SECTION to read:

11 If the insurance maintained by a driver to fulfill the insurance requirements of this Act has
12 lapsed, failed to provide the required coverage, denied a claim for the required coverage, or
13 otherwise ceased to exist, the insurance maintained by the TNC shall provide the coverage
14 required by this Act beginning with the first dollar of a claim. The insurance may be placed with
15 any insurer authorized to do business in this state or with any surplus lines insurer eligible under
16 chapter 58-32. Coverage under a motor vehicle insurance policy maintained by the TNC may
17 not be dependant on a personal motor vehicle insurer first denying a claim nor shall a personal
18 motor vehicle insurance policy be required to first deny a claim.

19 Section 9. That the code be amended by adding a NEW SECTION to read:

20 The transportation network company shall disclose in writing to a driver the following
21 before a driver is allowed to accept a request for services on the TNC's digital network:

22 (1) The insurance coverage and limits of liability that the TNC provides while the TNC
23 driver uses a motor vehicle in connection with the TNC's digital network; and

24 (2) That the driver's personal insurance policy may not provide coverage while the driver

1 uses the motor vehicle in connection with the TNC's digital network, depending on
2 the policy's terms.

3 Section 10. That the code be amended by adding a NEW SECTION to read:

4 Any insurer that writes motor vehicle liability insurance in the state may exclude any and
5 all coverage and the duty to defend afforded under the owner's insurance policy for any loss or
6 injury that occurs while an insured motor vehicle provides or is available to provide
7 transportation network company services, if the exclusion is expressly set forth in the policy and
8 approved for sale in the state, or if the policy was purchased before access to the TNC digital
9 network was granted and the insurer was not informed of the services. The insurer shall notify
10 an insured within thirty days after receiving a notice of loss that the insurer has no duty to
11 defend or indemnify any person or organization for liability for a loss that is properly excluded
12 pursuant to the terms of the applicable primary or excess insurance policy. The requirement for
13 notice of the exclusion shall not apply to pre-existing insurance coverage.

14 Section 11. That the code be amended by adding a NEW SECTION to read:

15 Any insurer that writes motor vehicle liability insurance in this state shall prominently
16 disclose on its application for insurance whether or not the insurance policy covers an insured
17 motor vehicle while the vehicle provides or is available to provide transportation network
18 company services. If a motor vehicle liability insurance policy contains an exclusion for TNC
19 services, the insurer shall disclose in writing the exact language of the exclusion to the applicant
20 during the application process.

21 Section 12. That the code be amended by adding a NEW SECTION to read:

22 In a claim coverage investigation, a transportation network company and any insurer
23 providing coverage under this Act shall cooperate to facilitate the exchange of information,
24 including the precise times that a TNC driver logged on and off of the TNC's digital network

1 in the twenty-four hour period immediately preceding the accident, and disclose to one another
2 a clear description of the coverage, exclusions, and limits provided under any insurance policy
3 each party issued or maintained.

4 Section 13. That the code be amended by adding a NEW SECTION to read:

5 A transportation network company shall establish procedures to report any complaint about
6 a driver with whom a rider was matched and who the rider reasonably suspects was under the
7 influence of alcohol or drugs during the course of the trip. Upon receipt of a rider complaint
8 alleging a violation of the TNC's zero tolerance policy, the TNC shall immediately suspend the
9 driver's access to the TNC's digital network, and shall conduct an investigation into the reported
10 complaint. The suspension shall last the duration of the investigation. The TNC shall maintain
11 records relevant to a rider complaint made pursuant to this section for a period of at least two
12 years from the date the complaint is received by the TNC.

13 Section 14. That the code be amended by adding a NEW SECTION to read:

14 No transportation network company may permit a person to act as a driver on its digital
15 network who:

- 16 (1) Has been convicted, within the past three years, of more than three moving
17 violations, or one major violation involving police evasion, reckless driving, driving
18 on a suspended or revoked license, or any other major violation the TNC feels may
19 endanger the safety of a rider;
- 20 (2) Has been convicted, within the past seven years, of driving under the influence of
21 drugs or alcohol, fraud, any sexual offense, use of a motor vehicle to commit a
22 felony, a crime involving property damage, theft, any crime involving acts of
23 violence, or acts of terror;
- 24 (3) Is a match in the national sex offender registry;

- 1 (4) Does not possess a valid driver's license;
- 2 (5) Does not possess proof of registration for any motor vehicle used to provide services;
- 3 (6) Does not possess proof of automobile liability insurance for any motor vehicle used
- 4 to provide services; or
- 5 (7) Is not at least nineteen years of age.

6 Section 15. That the code be amended by adding a NEW SECTION to read:

7 A transportation network company shall adopt a policy prohibiting solicitation or acceptance
8 of cash payments from riders and shall notify each driver of the policy. A driver may not solicit
9 or accept cash payments from riders, nor solicit or accept street hails. Any payment for services
10 shall be made only electronically using the TNC's digital network or software application. A
11 driver shall apply for a state sales tax license and remit taxes accordingly.

12 Section 16. That the code be amended by adding a NEW SECTION to read:

13 Except as otherwise provided in this Act, no transportation network company may disclose
14 a rider's personally identifiable information to a third party unless:

- 15 (1) The rider consents;
- 16 (2) The disclosure is required by legal obligation; or
- 17 (3) The disclosure is required to protect or defend the terms of use of the service or to
- 18 investigate violation of those terms.

19 A TNC may share a rider's name and telephone number with the driver providing the
20 services to the rider in order to facilitate correct identification of the rider by the driver, or to
21 facilitate communication between the rider and the driver.

22 Section 17. That the code be amended by adding a NEW SECTION to read:

23 A transportation network company shall maintain records of each driver's application, motor
24 vehicle records, insurance coverage, and proof of all background checks conducted, for a period

1 of five years from the date on which a driver's activation on the TNC's digital network has
2 ended. A TNC shall allow inspection of these records by the Department of Public Safety at the
3 department's request, and shall facilitate the department however necessary in that inspection.
4 The department shall inspect the records at least once annually.

5 Section 18. That the code be amended by adding a NEW SECTION to read:

6 If a transportation network company fails to comply with any section of this Act, the
7 Department of Public Safety shall revoke the TNC's license to operate in the state for the period
8 of one year per offense.

9 Section 19. That the code be amended by adding a NEW SECTION to read:

10 Nothing in this Act may be construed to limit further regulation of a transportation network
11 company enacted by a city or county.

12 Section 20. That § 32-9-3 be amended to read:

13 32-9-3. For the purposes of this chapter, the following do not come within the definition of
14 "motor carriers" or "commercial vehicles" if used in intrastate operations:

15 (1) A motor vehicle registered in South Dakota used to carry private business property
16 of five hundred pounds or less;

17 (2) A motor vehicle chassis registered in South Dakota on which is mounted a
18 cornsheller, grain cleaner, feed grinder, grain and alfalfa feed mixing machine,
19 haystack mover, sawmill, water well drilling equipment, power shovel, ditchdigger,
20 mobile crane which exceeds the maximum size or weight limits prescribed by chapter
21 32-22, drag line, posthole auger, and which is not used for demonstration or display
22 purposes outside the limits of a municipality, or a truck tractor and trailer carrying
23 permanently mounted hay grinding equipment;

24 (3) Any motor vehicle registered in South Dakota used for the transportation of liquid

1 or solid livestock waste including trailers and equipment used to load liquid or solid
2 livestock waste and any vehicle registered in South Dakota used for the application,
3 distribution, spraying, or transportation from retail business to user of dry, liquid, or
4 anhydrous ammonia fertilizers or agricultural chemicals;

5 (4) A motor vehicle registered in South Dakota of less than thirty thousand pounds gross
6 weight owned by a merchant licensed under chapter 10-45 or the merchant's
7 commissioned paid employee and used to transport the merchant's previously sold
8 merchandise to a purchaser outside the limits of a municipality and to return
9 exchanged property or to transport fuels to a purchaser within a municipality or an
10 unincorporated town which is without such service;

11 (5) A motor vehicle registered in South Dakota, owned by a farmer of this state and used
12 by or for the farmer to transport property for the farmer's farming operation, to
13 transport farm property from farm to farm or from a community or market to the farm
14 or from the farm to a community or market, to transport livestock in a vehicle or
15 combination of vehicles registered at twenty-six thousand pounds or less without
16 monetary compensation, or to transport farm property when the vehicles are used as
17 reimbursement in the ordinary exchange of farm work;

18 (6) A motor vehicle registered in South Dakota operated by or for its owner and
19 exclusively used to transport products originating in or produced from logging or
20 mining operations or lumber milling waste products if such products are owned in
21 fee by the motor vehicle owner;

22 (7) Any motor vehicle, trailer, semitrailer, motor propelled, or trailed vehicle chassis
23 registered in South Dakota, which is used exclusively on the job site for the
24 construction of township roads, stock water dugouts, dams, farm and ranch irrigation

1 systems, or other soil and water conservation projects on farms and ranches, or for
2 the construction or maintenance of highways in the State of South Dakota. Prior to
3 moving any such vehicle or equipment between job sites or from job site to a central
4 location, the owner shall register the vehicle or equipment pursuant to § 32-9-58;

5 (8) A motor vehicle used principally for providing prearranged transportation of persons
6 to or from their place of employment and is operated by a person who does not drive
7 the vehicle for the person's principal occupation, but is driving it only to or from the
8 person's principal place of employment or for personal use as permitted by the owner
9 of the vehicle;

10 (9) A motor vehicle that is not for hire and is operated solely for educational purposes
11 by a student or an instructor as part of a heavy motor vehicle or heavy equipment
12 operator's course offered by a nonprofit postsecondary institution located in the state;

13 (10) A motor vehicle used for personal purposes and not operated for private business use;

14 (11) A motor vehicle used for recreational purposes and not operated for private business
15 use;

16 (12) A motor vehicle, trailer, semitrailer, motor propelled, or trailed vehicle chassis,
17 registered in South Dakota and used to move equipment involved in soil and water
18 conservation projects or township road work when operated between job sites or
19 from a job site to a central location or point of repair;

20 (13) Any motor vehicle used by an implement dealer to transport farm machinery to and
21 from a county fair or the state fair;

22 (14) A motor vehicle owned by a licensed motor vehicle dealer and used to transport
23 inventory replacement vehicles to the dealer's principal place of business. For the
24 purpose of this subdivision, motor vehicle does not include any motor vehicle which

1 carries inventory replacement vehicles entirely upon its own structure; and

2 (15) A motor vehicle used to provide any transportation network services, as defined by
3 section 1 of this Act.

4 Section 21. That § 32-12A-9 be amended to read:

5 32-12A-9. The following are exempt from the provisions of this chapter:

6 (1) ~~Operators~~ Any operator involved in farm to market transportation movements, at
7 least sixteen years of age holding a valid operator's license, limited to those operators
8 of a farm vehicle:

9 (a) Controlled and operated by a farmer;

10 (b) Used to transport either agricultural products, farm machinery, or farm
11 supplies to or from a farm; and

12 (c) Not used in the operations of a common or contract motor carrier;

13 (2) ~~Operators~~ Any operator of emergency fire fighting equipment necessary to the
14 preservation of life or property or the execution of emergency governmental
15 functions performed under emergency conditions that are not subject to normal traffic
16 regulation, or nonemergency conditions when operated by ~~members~~ any member of
17 a fire fighting agency;

18 (3) ~~Operators~~ Any operator of a commercial motor vehicles for military purposes
19 including:

20 (a) Active duty military personnel;

21 (b) Members of the military reserves;

22 (c) Members of the national guard on active duty, including personnel on full-
23 time national guard duty, personnel on part-time national guard training and
24 national guard military technicians (civilians who are required to wear military

1 uniforms); and

2 (d) Active duty U.S. Coast Guard personnel;

3 (4) ~~Operators~~ Any operator of a recreational ~~vehicles~~ vehicle;

4 (5) ~~Operators~~ Any operator of rental transporting equipment used as personal family use
5 vehicles; ~~and~~

6 (6) ~~Operators~~ Any operator of a covered farm vehicle as defined in 49 CFR 390.5 as of
7 January 1, 2015, and

8 (7) Any transportation network company driver as defined in section 1 of this Act.

9 United States reserve technicians are not exempt under the provisions of subdivision (3) of
10 this section.